UNITED NATIONS

ECONOMIC AND SOCIAL COUNCIL

Distr.
GENERAL

E/CN.15/1994/4/Add.1
25 February 1994

ORIGINAL: ENGLISH

COMMISSION ON CRIME PREVENTION
AND CRIMINAL JUSTICE
Third session
Vienna, 26 April-6 May 1994
Item 3 of the provisional agenda*

REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Status of the preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

Addendum

Report on the meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the report on the meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties, held at Vienna from 18 to 21 October 1993 (see annex).

*E/CN.15/1994/1.

V.94-21262T

Annex

REPORT ON THE MEETING OF THE AD HOC EXPERT GROUP ON IMPLEMENTING LEGISLATION TO FOSTER RELIANCE ON MODEL TREATIES, HELD AT VIENNA FROM 18 TO 21 OCTOBER 1993

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RECOMMENDATIONS

The Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties recommended to the Commission on Crime Prevention and Criminal Justice, at its third session, consideration of the following draft resolution:

The Commission on Crime Prevention and Criminal Justice,

Bearing in mind the Milan Plan of Action[1] adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders and approved by the General Assembly in its resolution 40/32 of 29 November 1985,

Bearing in mind also the Guiding Principles for Crime Prevention and Criminal Justice in the Context of Development and a New International Economic Order,[2] principle 37 of which stipulates that the United Nations should prepare model instruments suitable for use as international and regional conventions and as guides for national implementing legislation,

Recalling resolution 1 of the Seventh Congress,[3] on organized crime, in which Member States were urged, inter alia, to increase their activity at the international level in order to combat organized crime, including, as appropriate, entering into bilateral treaties on extradition and mutual legal assistance,

Recalling the Model Treaty on Extradition, the Model Treaty on Mutual Assistance in Criminal Matters and the Model Treaty on the Transfer of Proceedings in Criminal Matters adopted, on the recommendation of the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, by the General Assembly in its resolutions 45/116, 45/117 and 45/118 of 14 December 1990, respectively, in which the Assembly, inter alia, urged Member States to strengthen international cooperation in criminal justice and invited them to take into account the model treaties when establishing or revising treaty relations with other States in such matters,

Recalling Economic and Social Council resolution 1992/23 of 30 July 1992, in which the Council requested the Secretary-General to continue the analysis of information on, inter alia, legislative measures and the promotion of international cooperation aimed at controlling organized crime,

Recalling also the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, former Czechoslovakia, in 1991, which the Economic and Social Council, in its resolution 1992/23, noted and offered for the consideration of Governments, and which included the recommendation that national and international efforts to achieve more effective strategies to deal with transnational crime should focus on, inter alia, cooperation through extradition, mutual assistance, including the designation of an appropriate coordinating authority to expedite the implementation of treaties,

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[1] Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: report prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. I, sect. A.

[2] Ibid., sect. B.

[3] Ibid., sect. E.

1. Invites Member States to consider the following measures in the context of the use and application of the model treaties:

(a) Establishing a designated central authority to process requests for mutual assistance in criminal matters and extradition;

(b) Undertaking periodic reviews of their treaty relations and implementing legislation, with reference to the relevant model treaty;

(c) Clarifying, where appropriate, the roles of departments of State and foreign ministries having a diplomatic and policy function, on the one hand, with those having a technical legal and/or law enforcement role on the other;

(d) Enacting streamlined national legislation giving effect to treaties on international cooperation in criminal matters;

(e) Simplifying and streamlining procedures necessary to execute and initiate requests for assistance, including the provision of information to requested States sufficient to identify the material which is the subject of the assistance sought, particularly where the exercise of compulsory powers is required;

(f) In respect of extradition:

(i) Providing for extradition based upon a level of documentation which is sufficient to establish the need for trial where a person is accused of an offence;

(ii) Providing for extraditable offences to extend to all acts and omissions which would be a criminal offence in both States carrying a prescribed minimum penalty, and not to be individually listed in treaties;

2. Requests the Secretary-General to take appropriate steps to ensure that the crime prevention and criminal justice programme is adequately strengthened and provided with additional resources, if necessary by means of extrabudgetary funds by donor States or organizations, to enable the programme to respond effectively to requests for technical assistance by Member States in the areas covered by the model treaties;

3. Requests the Secretary-General:

(a) To develop training materials, as soon as possible, in cooperation with experts and Member States, for use in providing technical training to requesting Member States on the model treaties, especially those relating to mutual assistance in criminal matters, extradition and the transfer of criminal proceedings, including in particular:

(i) Manuals providing guidance concerning those model treaties;

(ii) General guidelines for national legislation to implement those model treaties;

(b) To continue to provide advisory and technical cooperation services to Member States requesting assistance concerning the use and application of those model treaties as required, especially practical assistance with drafting implementing legislation;

(c) To prepare and distribute to Member States a list of central authorities designated by countries to deal with requests for mutual assistance in criminal matters and extradition, before the end of 1994;

(d) To coordinate periodic meetings of central authorities of Member States dealing with requests for mutual assistance in criminal matters and extradition from Member States or to promote such meetings on a regional basis for Member States wishing to attend;

(e) To provide training to central authorities of requesting Member States dealing with mutual assistance in criminal matters and extradition requests;

(f) To develop a roster of experts who could be consulted on the subjects dealt with by the model treaties;

(g) To coordinate requests for office equipment required by central authorities to implement relevant treaties, with resources made available by donor Member States and organizations for that purpose;

(h) To make available to Member States information on national legislation and practices relating to international cooperation in criminal matters;

(i) To provide new or additional resources, where appropriate, to enable the United Nations crime prevention and criminal justice programme to fulfil these tasks.

I. BACKGROUND

1. The meeting of the Ad Hoc Expert Group on Implementing Legislation to Foster Reliance on Model Treaties was held at Vienna from 18 to 21 October 1993. The Meeting was convened with a view to encouraging Member States to give greater attention to the promulgation and implementation of appropriate laws to counter transnational crime.

2. On the recommendation of the Eighth United Congress on the Prevention of Crime and the Treatment of Offenders, the General Assembly, in its resolutions 45/116, 45/117 and 45/118, adopted three model treaties on international cooperation in criminal justice matters. In adopting the model treaties, the Assembly, inter alia, invited Member States, if they had not already established treaty relations with other States, or if they wished to revise existing treaty relations, to take the model treaties into account. Member States were also urged to strengthen international cooperation in criminal justice, and to inform the Secretary-General periodically of efforts undertaken to establish treaty arrangements. Finally, Member States were invited to make available to the Secretary-General the provisions of their treaty legislation to assist those Member States desiring to enact or further develop legislation in the fields concerned.

3. The Economic and Social Council, in its resolution 1992/23, also requested the Secretary-General to continue the analysis of information on legislative measures and the promotion of international cooperation aimed at controlling organized crime.

4. The model treaties and other instruments considered by the Expert Group were as follows:

(a) Model Treaty on Extradition, adopted by the General Assembly in resolution 45/116;

(b) Model Treaty on Mutual Assistance in Criminal Matters, adopted by the General Assembly in its resolution 45/117;

(c) Model Treaty on the Transfer of Proceedings in Criminal Matters, adopted by the General Assembly in its resolution 45/118;

(d) Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, adopted by the General Assembly in resolution 45/119;

(e) Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, adopted by the Eighth Congress;[1]

(f) Model Agreement on the Transfer of Foreign Prisoners, adopted by the Seventh Congress as noted by the General Assembly in its resolution 40/146;

(g) Draft Model Treaty on the Transfer of Enforcement of Penal Sanctions, elaborated by an expert group at Siracusa, Italy, from 3 to 8 December 1991 (E/CN.15/1992/4/Add.3 and Corr.1, annex I) and cited with approval in the report of the Commission on Crime Prevention and Criminal Justice on its first session (E/1992/30, paras. 66-67);

(h) Model Decree for the Confiscation of Criminal Proceeds (E/CN.15/1992/4/Add.1, annex II, elaborated by the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime, held at Smolenice, former Czechoslovakia, from 27 to 31 May 1991.

The meeting focused primarily on the Model Treaty on Extradition and the Model Treaty on Mutual Assistance in Criminal Matters.

5. The particular objectives of the meeting in respect of the model treaties were as follows:

(a) To examine national and international experiences concerning the use and application of the model treaties;

(b) To identify legal and operational problems which may impede effective use of the model treaties;

(c) To consider possible steps towards improving the compatibility of national legislation in order to improve international cooperation in the areas addressed by the model treaties;

(d) To identify practical options and strategies for overcoming procedural problems in reliance on model treaties;

(e) To consider technical cooperation activities, including training, advisory services and publications which might be provided to requesting Member States.

6. Further to these objectives, the attention of the participants was drawn to the following possible areas of difficulty, with a view to making recommendations as appropriate:

(a) Any difficulties on the part of national policy makers and legislators in appreciating the possible role of the model treaties;

(b) Any shortcomings in national legislation applying to the model treaties;

(c) Possible problems with the resources available to competent national authorities;

(d) Procedural and substantive constraints in requested States, limiting their ability to fully execute requests made pursuant to bilateral arrangements based on the model treaties;

(e) Any difficulties relating to the form and content of requests;

(f) Any lack of clear procedures to govern the daily relations between national authorities.

7. The meeting was attended by experts from nine countries and by observers from the United Nations International Drug Control Programme (UNDCP) and from two intergovernmental organizations. To assist with the deliberations of the meeting, the Secretariat provided a background paper on the model treaties, and experts presented country papers containing an overview of the relevant applicable laws in their countries, as well as any difficulties and issues concerning the implementation of the model treaties. A list of participants is contained in the appendix to the present report.

8. Hassan Jallow, Attorney-General and Minister of Justice of the Gambia, chaired the meeting; and B. Bannerman, of the Attorney-General's Department in Australia, served as Rapporteur.

II. SUMMARY OF THE DISCUSSION

9. All participants agreed on the importance of strengthening international cooperation in the face of growing transnational crime. Experts considered that the model treaties were very useful tools to assist Member States in combating crime at the national, regional and international level. A number of participants said that their Governments had referred to the model treaties when negotiating bilateral arrangements. Others reported that while their Governments had not directly utilized the model treaties, they were aware that the approaches taken were consistent with the models.

10. It was agreed that the model treaties needed to be supported by legislation at a national level to be effective. A number of participants advised that their countries did not have legislation dealing specifically with the subject matter of the model treaties, and that requests for assistance were dealt with through diplomatic channels, which could lead to delays in executing requests or the unavailability of assistance. It was considered that national legislation should be as streamlined as possible, both as to substantive law and procedural matters. That was necessary in order to achieve maximum efficiency with limited national resources. The importance of simplified laws and procedures was emphasized, since undue complexity tended to lead to delays and problems in executing requests.

11. The participants discussed the possibility of preparing model legislation for reference by Member States wishing to implement the model treaties. Some participants considered that that would be helpful for Member States that did not have the necessary legislation. However, other participants were of the view that the legal, social and political differences between different countries were too great for that to be practical, and that suggestions as to implementation measures would be more useful if included in training material.

12. In order to assist requesting Member States with that, it was agreed that the United Nations should prepare general guidelines for implementing legislation, which would identify those matters the requested State needed to be able to fulfil under its domestic law. It was suggested that such guidelines should contain examples of implementing legislation which were representative of different legal systems. A number of participants advised that they would be prepared to assist in that work by providing information and expertise.

13. The Expert Group was pleased to note that, at the request of and in cooperation with the Crime Prevention and Criminal Justice Branch, the Canadian Government had produced a draft manual on the Model Treaty on Mutual Assistance in Criminal Matters, which was distributed for comments from participants. A final draft would be prepared within two months of the date of the receipt of all comments. That draft would also include a model request for assistance.

14. In addition, it was announced that the Government of Australia had made a commitment to prepare a similar draft manual on the Model Treaty on Extradition. The experts of Mexico and of the United States of America stated that they would cooperate in preparing a draft manual on the Model Treaty on the Transfer of Proceedings in Criminal Matters. It was considered that such initiatives were very positive steps towards the practical use and application of the model treaties.

15. Participants agreed that the Branch should be enabled to provide to Member States assistance in the preparation of national legislation upon request.

16. A number of experts raised the issue of difficulties arising in the execution of requests, due to defects in the form and content of requests. It was considered that a standard form of request could assist Member States with the speedy execution of requests. It was agreed that a standard request form should be included in the manual on the Treaty on Mutual Legal Assistance in Criminal Matters for the consideration of interested Member States. It was also emphasized that the provisions of treaties should be kept up to date, especially in the light of new technology and other means, including modes of transportation available to criminals.

17. Some experts also suggested that the United Nations should develop new model treaties, especially in the areas of organized crime, money-laundering and corruption. In that context, one participant suggested that the Commission on Crime Prevention and Criminal Justice should establish a special working group on the model treaties and other such instruments to prepare proposals based on the analysis of the legislation and experiences of Member States. Other options discussed included the elaboration of model intergovernmental agreements for direct cooperation between law enforcement agencies, dealing with areas such as terrorism. However, most participants were of the view that it would be better to focus on improving the use and application of existing instruments, in accordance with the priorities of the Commission.

18. The importance of close cooperation between responsible officials at national levels was strongly emphasized. Several experts suggested that meetings of such officials should be arranged periodically, through the offices of the United Nations, subject to the provision of adequate resources by Member States. It was considered that such meetings would make a very valuable contribution to improving international cooperation through exchanges of information as well as informal discussions. Some participants considered that such meetings could be held on a regional basis. Further consideration of funding for such meetings would be necessary, to ensure participation of developing countries.

19. It was agreed that training should focus primarily on the central authorities of States requesting assistance. Such training could be provided by the United Nations, on a bilateral basis by other States or by intergovernmental organizations. It was envisaged that such central authorities could in turn provide training to law enforcement officials and other government officials. It was suggested that the United Nations should also, where possible and appropriate, keep members of the judiciary advised about developments in the area of international cooperation in criminal matters. It was agreed that the proposed manuals on model treaties, as well as guidelines for national legislation, would provide useful material for training. They could also be made available to Member States seeking more information on the model treaties but not requesting training or advisory services.

20. It was noted that the different legal traditions of Member States could create difficulties with international cooperation, especially in respect of the admissibility of evidence. It was also noted that difficulties had been encountered in respect of the official recognition of the source of requests. It was considered that the Crime Prevention and Criminal Justice Branch could assist through its clearing-house function by making information available to Member States. In particular, it was thought that the Branch should circulate a list of central national authorities competent to deal with requests for mutual legal assistance and extradition. It was agreed that appropriate national measures should be put in place to ensure the admissibility of evidence obtained pursuant to requests for mutual assistance in criminal matters.

21. In that respect it was considered that greater appreciation of other legal systems was desirable, especially the difference between civil law and common law jurisdictions. Where possible, national legislation should be prepared to facilitate better coordination and cooperation between Member States.

22. There was some discussion of individual areas of difficulty in the application of the model treaties. Concern was expressed about the detrimental effects which undue banking secrecy could have on international cooperation, particularly relating to the proceeds of crime. Further discussion might be necessary in other forums before general agreement could be reached between Member States concerning the desirability of entering into treaties on mutual assistance in criminal matters which would include obtaining bank records under compulsory processes. Difficulties relating to the confiscation of property involved in crime and jurisdictional problems involving the law of the sea were also discussed.

23. A number of experts raised the issue of the political offence exception as a ground for refusing requests, and were concerned that that ground should not impair the ability of requested States to provide assistance in relation to common crimes. Some participants questioned whether it should be a ground for refusing requests. It was considered by many participants that the political offence exception should not be used to prevent the provision of assistance in respect of crimes of terrorism, although it was noted that there were problems of definition in those areas.

24. A number of experts discussed the possibility of using the transfer of proceedings as an alternative where extradition was not possible. Experts also recognized the desirability of transfer-of-prisoner schemes subject to appropriate provision being made for payment of costs associated with the transfer. Some experts suggested that prisoners, or their families, making a request for transfer should be liable for the related costs incurred.

25. The importance of strengthening the resources of the Crime Prevention and Criminal Justice Branch was emphasized in the context of the United Nations role in promoting international cooperation by undertaking a number of activities, which were included in the recommendations of the Expert Group.

26. While it was suggested that accelerating the adoption of an international penal code could facilitate international cooperation, it was also observed that holding United Nations congresses on the prevention of crime and the treatment of offenders every three years instead of five would intensify international contacts and thus contribute to more effective collaborative arrangements.

Note

[1]Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.20), chap. I, sect. B.1.

Appendix

LIST OF PARTICIPANTS

Experts

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Jianping Cao, Bureau of International Judicial Assistance, Ministry of Justice, China

W. H. Corbett, Senior General Counsel, International Assistance Group, Department of Justice, Canada

Cenk Alp Durak, Deputy Director-General for Penal Affairs, Ministry of Justice, Turkey

John Harris, Deputy Director, Office of International Affairs, Criminal Division, Department of Justice, United States of America

Guillermo Alejandro Hernandez-Salmeron, Advisor to the General Coordinator of Human Rights and Drug Trafficking, Ministry of Foreign Affairs, Mexico

Hassan Jallow, Attorney General and Minister of Justice, Ministry of Justice, the Gambia

Wafik Zaher, Deputy Director, Legal Department, Ministry of Foreign Affairs, Egypt

A. V. Zmeevski, Deputy Director, Legal Department, Ministry of Foreign Affairs, Russian Federation

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United Nations International Drug Control Programme

Intergovernmental organizations

Asian-African Legal Consultative Committee

Commonwealth Secretariat